

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

OCCIDENTAL CHEMICAL
CORPORATION,

Plaintiff,

vs.

21ST CENTURY FOX AMERICA, INC., *et al.*,

Defendants.

Civil Action No. 18-11273 (MCA)(JD)

**INTERIM ORDER OF SPECIAL MASTER
REGARDING SMALL PARTIES GROUP'S
MOTION TO COMPEL PRODUCTION OF
DOCUMENTS AGAINST PLAINTIFF**

WHEREAS, the Small Parties Group (“SPG”) filed a Motion to Compel Plaintiff, Occidental Chemical Corporation (“OxyChem”), to disclose documents withheld as privileged or otherwise protected by OxyChem in its privilege logs (the “Motion”) (ECF No. 1091); and

WHEREAS, the Motion addressed four categories of documents identified on various versions of OxyChem’s privilege logs, **H-1** through **H-4** (“Exhibits H-1 through H-4” to the Motion); and

WHEREAS, in the Motion, SPG argues that OxyChem has not met its burden of establishing the applicability of any privileges, including the community-of-interest privilege, joint-client privilege, and work-product doctrine, to withhold numerous documents identified in Exhibits H-1 through H-4; and

WHEREAS, in opposition to the Motion, OxyChem argues it has met its burden because it shared with Maxus Energy Corporation and Tierra Solutions, Inc. common interests as well as joint counsel and consultants, including Vinson & Elkins, Andrews & Kurth, Drinker Biddle, and the consultants identified in the Declaration of David Rabbe (individually or collectively, “Outside Counsel and Consultants”) (ECF No. 1102-5);

WHEREAS, at the request of the Special Master, OxyChem provided updated privilege logs on October 21, 2020, to reflect the documents in categories **H-3** and **H-4** that are currently in dispute; and

WHEREAS, on October 28, 2020, the Special Master held oral argument virtually via the Zoom platform; and

WHEREAS, prior to entry of a final decision on the Motion, the Special Master requires additional information to further develop the record;

IT IS on this 4th day of November 2020,

ORDERED that in respect of category **H-1** (“Exhibit H-1” to the Motion):

1. OxyChem shall filter the H-1 privilege log to remove all entries that are identified as being sent to, received by, or drafted by any Outside Counsel and Consultants, and provide the updated privilege log, electronically in Excel format, to the Special Master with a copy to counsel for SPG, no later than **November 11, 2020**; and

2. OxyChem and SPG shall meet-and-confer by no later than **November 13, 2020**, to discuss whether the parties can agree on a joint list of 200 sample documents from the revised and filtered H-1 privilege log to be produced by OxyChem to the Special Master for *in camera* review; and

3. Following the meet-and-confer, OxyChem shall produce the 200 documents to the Special Master electronically, for *in camera* review, with an index of the documents, no later than **November 18, 2020**; and

4. If after the aforementioned meet-and-confer process the parties cannot agree on the 200 documents to be provided for *in camera* review, OxyChem shall produce all documents that SPG and OxyChem have agreed on by **November 18, 2020**, and the Special Master will select the

remaining documents for *in camera* review; and it is further

ORDERED that in respect of category **H-2** (“Exhibit H-2” to the Motion), OxyChem shall produce the 66-page document dated September 24, 1996, under bates stamp number MAXUS0852058 to the Special Master for *in camera* review no later than **November 11, 2020**; and it is further

ORDERED that in respect of category **H-3** (“Exhibit H-3” provided by OxyChem on October 21, 2020), OxyChem shall produce all documents identified on H-3 as being sent to or received by any federal or state regulators or government agencies, including but not limited to New Jersey Department of Environmental Protection (“NJDEP”) and the United States Environment Protection Agency (“U.S. EPA”), to the Special Master for *in camera* review no later than **November 11, 2020**, including:

1. MaxPriv000337 - dated March 16, 1992 - sent to Fred Scaccetti at NJDEP;
2. MaxPriv109228 - dated April 19, 1989 - sent to Randey Stein at U.S. EPA;
3. MaxPriv111550 - dated August 16, 2007 - sent to Raymond J. Basso at U.S. EPA;
4. MaxPriv111798 - dated December 5, 2009 - sent to NJDEP;
5. MaxPriv125420 - dated June 10, 2008 - sent to Karlen Delmar Jr. and Raymond J. Basso at U.S. EPA;
6. MaxPriv125422 - dated June 10, 2008 - sent to Karlen Delmar Jr. and Raymond J. Basso at U.S. EPA;
7. MaxPriv125423 - dated June 10, 2008 - sent to Karlen Delmar Jr. and Raymond J. Basso at U.S. EPA;
8. MaxPriv126189 - January 15, 2008 - sent to U.S. EPA Region 2;
9. MaxPriv126500 - dated March 5, 2009 - sent to Alice Yeh at U.S. EPA;

10. MaxPriv127633 - dated May 5, 2010 - sent to Basso;
11. MaxPriv127634 - dated May 5, 2020 - sent to Basso and Yeh; and
12. MaxPriv127692 - dated January 31, 2007 - sent to Walter Mugdan, Ray Basso, Stephanie Vaughn, Alice Yeh, Eric Stern, Eugenia Naranjo, John Connolly, Clifford Firstenberg, Rob Law, Mike Barbara, and Geoff Grubbs; and it is further

ORDERED that in respect of category **H-4** ("Exhibit H-4" provided by OxyChem on October 21, 2020):

1. OxyChem shall filter the H-4 privilege log to remove all entries that were identified as being sent to, received by, or drafted by any Outside Counsel and Consultants and provide the updated filtered privilege log, electronically in Excel format, to the Special Master with copy to counsel for the SPG, by no later than **November 11, 2020**; and
2. OxyChem shall submit to the Special Master electronically, for *in camera* review, all documents remaining on the H-4 privilege log, as revised and filtered pursuant to this Order, by no later than **November 18, 2020**.

/s/ Thomas P. Scrivo
THOMAS P. SCRIVO
Special Master